

**Preliminary Determination Package (Pre-NOIRA)
For Amending Regulations Titled
Virginia Hearing Impairment Identification and Monitoring System
(12 VAC 5-80)**

Source of Legal Authority to Promulgate: Source and Scope of the Mandate.

The existing Hearing Impairment Identification and Monitoring System was adopted in 1987 under the authority of Sections 32.1-64.1 and 32.1-64.2 of the *Code of Virginia*. Section 32.1-64.1 of the *Code* requires the State Health Commissioner to establish and maintain the Virginia Hearing Impairment Identification and Monitoring System in order to “identify hearing loss at the earliest possible age and to provide early intervention for...infants [with hearing impairment],” and requires the State Board of Health to promulgate regulations for implementing this system.

In addition, SB 591 (acts of Assembly, 1998, Chapter 506) amended Section 32.1-64.1 to require that “[b]eginning July 1, 2000, the [State] Board of Health shall provide by regulation for the giving of hearing screening tests for all infants born in all hospitals,” and not just those infants deemed to be at risk for hearing impairment. This bill also provides that the regulations “shall establish when the testing shall be offered and performed and procedures for reporting,” and that they include “current screening methodology,” and that they require reporting of determinations indicating hearing impairment to parents, appropriate primary care physicians, and the Commissioner.

Potential Issues to be Addressed.

Many of the issues to be addressed were identified during the comprehensive review of the regulation completed by the Virginia Department of Health (VDH) in response to Executive Order 15 (94). The intended regulation would: (i) establish standards by which all hospitals and birthing centers shall identify infants at risk for hearing loss and perform a hearing screening test prior to discharge after birth; (ii) establish procedures for reporting; (iii) establish appropriate mechanisms for follow-up care; (iv) establish standards for the diagnostic audiological evaluation of infants and young children, including the approval of test sites; (v) clarify the relationships between the identification and monitoring system and other state agency programs and activities; and (vi) establish review and evaluation mechanisms.

Item 3: Reasoning for Concluding the Contemplated Regulation is Essential.

The purpose of the regulation, and the intended amendments, is to provide consistent guidance for the implementation and administration of a system designed to ensure that infants with hearing loss are identified and receive appropriate intervention at the earliest possible age after birth. This system, as indicated in the EO 15 comprehensive review, promotes early intervention that is crucial in preventing social problems, learning disabilities and costly treatment or remedial activities later in a child’s

life. The intended amendments are essential to improve and hone the system and allow it to comport with recent legislative directives.

Item 4: The Process by Which Less Burdensome and Intrusive Alternatives have been Considered.

VDH took advantage of the EO 15 comprehensive review process to determine whether any less burdensome or intrusive alternatives exist and none were identified by the review panel or by interested persons. That review found that the existing regulation does not exceed the specific minimum requirements of the state mandate. Further, the review found no less burdensome alternative that would meet the demonstrated need for a systematic state-wide program for early identification of infants with hearing impairment and their subsequent treatment. The 1998 enactment reflects this by explicitly requiring the Board to “provide by regulation for the giving of hearing screening tests for all infants born in all hospitals” by July 1, 2000.